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No. 94-697

In The

# Supreme Court of the United States

October Term, 1994

RICHARD BARRETT

*Petitioner,*

v.

THE MISSISSIPPI BAR

*Respondent.*

**On Petition For Writ Of Certiorari To The Mississippi Supreme Court**

## BRIEF IN OPPOSITION

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47 pp

## QUESTIONS PRESENTED

1. Whether the United States Supreme Court has the authority to review a decision of the Mississippi Supreme Court imposing discipline on a Mississippi attorney when a Petition for Rehearing/Motion for Clarification is currently pending before the Mississippi Supreme Court?

2. Does the United States Supreme Court have the authority to decide what statute of limitation Mississippi should adopt within which a disciplinary trial must be conducted?

3. Is Mississippi's requirement that disciplinary trials be conducted within 180 days from the date the hearing tribunal is appointed, unless extended by the Mississippi Supreme Court for good cause shown, unconstitutional?

4. Is Mississippi's rule that references to certain time limitations in its disciplinary process are administrative, not jurisdictional, violative of any constitutional right?

## PARTIES BELOW

The Mississippi Bar

Richard Barrett

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## RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Petitioner, Richard Barrett, prayed that a Writ of Certiorari be issued to review the Judgment of the Supreme Court of Mississippi in this matter but has not presented persuasive reasons why certiorari should be granted.

## OPINION BELOW

The ruling of the Mississippi Supreme Court from which the Petitioner seeks certiorari is included in the case styled *Richard Barrett v. The Mississippi Bar,* at Appendix A of Petitioner's Petition, dated July 24, 1994, wherein a Public Reprimand was issued to him. At trial, the Complaint Tribunal imposed a Public Reprimand a decision affirmed by the Mississippi Supreme Court which heard the case *de novo* on the record made before the Complaint Tribunal. However, the July 24, 1994 Supreme Court decision was preceded by its decision in the case of *Attorney K v. Mississippi State Bar Association,* 491 So.2d 220 (Miss. 1986) (See Appendix "1" hereto), involving the same factual situation as the instant case but reversed by the Mississippi Supreme Court on procedural due process grounds.

## SUMMARY OF THE ARGUMENT

The Petitioner herein submits that he has been denied due process of law and supports his position by stating that there has been a "delay of some nine years" in bringing him to the bar of justice. What Petitioner fails

to disclose to this Court is there has been no "delay of nine years" in the Mississippi Bar bringing charges against him since the facts upon which the instant proceeding is based occurred in March, 1982 and the initial informal complaint was filed in July, 1982. (A more complete summary of pertinent events is attached to Appendix "2" entitled "Chronology of Events").

The time from July, 1982 to May, 1991 was spent with investigating, prosecuting, appealing, re-investigating and re-prosecuting the 1982 factual situation.[1]

The mere fact that it took nine years to fully investigate and complete a trial before the Complaint Tribunal is not proof of delay.[2] Moreover, Petitioner submits that the Bar has violated its own rules.[3] In addition, Petitioner submits that the rules are patently arbitrary on their face or as applied by the Bar, further compounding the unconstitutionality of them but does not elaborate upon this position. In response, the Bar submits that Rule 8.1, Rules

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[1] At footnote 1 of Petitioner's Petition, he cites *Attorney K v. Mississippi State Bar*, 491 So.2d 220 (Miss. 1986) for support of his position that "Mississippi for instance, did not allow a lawyer to confront witnesses against him in an ethics proceedings until 1986." In his footnote, Petitioner further notes that he was counsel in that case but does not disclose that *Attorney K* was the predecessor case to the instant case.

[2] The Bar has filed a Petition for Rehearing and/or Motion for Clarification of the Opinions with the Mississippi Supreme Court which is still pending before that Court that characterized the Bar's action or lack of action as constituting delay.

[3] The Mississippi Rules of Professional Conduct and the Rules of Discipline are rules adopted by the Mississippi Supreme Court, not the Bar.

of Discipline, is not arbitrary on its face or as applied since the purposes of the disciplinary process are met under Mississippi's disciplinary process.

United States Supreme Court Rule 10 clearly sets forth the grounds which must be established in order for a Petition for a Writ of Certiorari to be granted:

> "A review on writ of certiorari is not a matter of right, but of judicial discretion. A Petition for Writ of Certiorari will be granted only when there are special and important reasons therefore."

In the case sub judice there simply does not exist any "special important reasons" to grant Petitioner's request for a writ. Instead, this action arises out of an ordinary, although lengthy, disciplinary case. As such, this case does not present any federal or state constitutional or statutory questions nor does it present any question upon which there is a conflict in the court of appeals or with the district courts. In addition, this case does not present an important issue of federal law nor does it present a conflict between a decision of a court of appeals and the Mississippi Supreme Court regarding a general, non-federal matter.

Moreover, as evidenced by the Mississippi Supreme Court's decision in the predecessor proceeding to the instant case, an adequate remedy exists with the Mississippi Supreme Court and within the Mississippi disciplinary process. Likewise, this proceeding is premature at best, since a Petition for Rehearing and/or Motion for Clarification of the Opinions has been filed in the instant

case which is currently pending before the Mississippi Supreme Court. (See Appendix "2" attached hereto.)

To justify a grant of certiorari the "special important" reasons must be more than "academic or episodic", the issues must "reach constitutional dimensions". *Rice v. Sioux City Memorial Park Cemetery,* 349 U.S. 70 (1955). "This Court does not sit to satisfy a scholarly interest . . . nor does it sit for the benefit of the particular litigant." *Rice,* 39 U.S. at 4 (citing *Magnum Import v. Cody,* 262 U.S. 159, 163 (1923). As the Court in *Layne and Bowler Corporation v. Western Well Works, Inc.,* 261 U.S. 387 (1923) stated:

> "It is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embracing conflict of opinion and authority between the circuit courts of appeal." *Layne and Bowler Corporation,* 261 at 393.

Therefore, the instant Petition does not deserve to be sustained.

## STATEMENT OF THE CASE

The Bar's Appendix "2" describes the pertinent events involved with the investigating and prosecuting of a disciplinary complaint, after remand of the initial disciplinary complaint from the Mississippi Supreme Court,

filed against Mr. Barrett involving the instant factual situation.[4]

As Petitioner has indicated, the Bar filed a Complaint against him on July 29, 1982 alleging that he had misled the court, by failing to disclose to the Chancery Court of Scott County, Mississippi, sitting in a special session at Bay Springs, Mississippi in Jasper County an emancipation proceeding brought on behalf of a minor by her father in Scott County to remove the disability of "minority" while a guardianship for the benefit of the minor was active in Rankin County. Based upon these facts, the Mississippi Supreme Court found that Barrett violated his oath of office as an attorney and DR's 1-102(A)(4[5], 5[6] & 6)[7] of the Code of Professional Responsibility by failing to inform the Court that a guardianship existed in Rankin County, Mississippi when he presented the Petition for Removal of Disability of Minority in Scott County on behalf of the same minor.

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[4] The Chronology of Events attached to Appendix "2" only lists the pertinent events after the Mississippi Supreme Court reversed the imposition of a Public Reprimand on procedural grounds. See *Attorney K v. Mississippi State Bar Association*, supra.

[5] DR1-102(A)(4) provides "a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

[6] DR1-102(A)(5) provides "a lawyer shall not engage in conduct that is prejudicial to the administration of justice."

[7] DR1-102(A)(6) provides "a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law."

## REASONS FOR NOT GRANTING THE PETITION FOR WRIT OF CERTIORARI RESPONSE TO PROPOSITION

### AN ATTORNEY IS ENTITLED TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT OR UNDER TRADITIONAL NOTIONS OF FAIR PLAY BUT IT IS LEFT UP TO THE STATES TO DECIDE IF ANY TIME LIMITATIONS SHOULD BE ESTABLISHED FOR THE FILING OF A DISCIPLINARY COMPLAINT AND WHEN TRIAL MUST BE HELD.

Notwithstanding Petitioner's comments, this case is simply one involving a disciplined attorney, understandingly disappointed over the Mississippi Supreme Court's affirmation of discipline imposed on him by a Complaint Tribunal, who seeks review and redress from this Court by raising an alleged lack of due process. This is not a proper case for an issuance of a Writ of Certiorari. Petitioner is simply mounting a last ditch effort, after years of litigation in the Mississippi disciplinary system, to convince this Court to provide him with further delay from facing the discipline which is now inevitable.

As Petitioner correctly points out: "Disciplinary proceedings have been left largely to the states". Therefore, in order for this Court to invade the province of each state to exercise its "inherent and exclusive jurisdiction"[8] over attorney discipline, a fundamental freedom must exist[9], otherwise each state is free to develop its own system of attorney regulation. In fact, some states utilize

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[8] Rule 1, Mississippi Rules of Discipline.

[9] For example, freedom of speech. *See Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

a process whereby the prosecuting attorney is an agency or master of the State's highest Court. Other states, like Mississippi, enlist the assistance of the State Bar to assist the legal profession by investigating and, where warranted, prosecuting allegations of attorney misconduct. Regardless of what process is utilized, the various states set their own standards and enforce them.[10]

In support of his argument that he has been denied due process, the Petitioner partially relies upon incomplete reasoning from a dissent in the Mississippi Supreme Court's decision. For example, he cites a Justice's dissent where the Justice stated "there is nothing in the Federal Constitution by which an attorney loses the right afforded to all when he takes the oath to practice law" but does not identify the right to which he is referring except to say "the rights that are granted to all other citizens of this great nation" (A 33). This incomplete statement lends itself to the asking of many questions including: Which "rights" and under what circumstances?

Moreover, Petitioner submits to this Court that it is presented with a delay of some nine years from the date the charge was made and trial had. However, as Appendixes "1" and "2" demonstrate the "delay" from 1982

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[10] It is submitted that the United States Supreme Court has no authority to order the Mississippi Supreme Court to adopt a rule that a disciplinary complaint be tried within a specific period of time. However, Mississippi has adopted a 180 day rule but that 180 day rule can be extended when good cause is shown and the United States Supreme Court has no authority to decide if that rule is unconstitutional.

through 1986 was brought about to protect Petitioner's right of confrontation. In addition, a substantial portion of the "delay" from 1986 to 1991 was to allow the Petitioner to fully cross-examine his accusers in deposition type proceedings and to recover from his "illness". Obviously, the "rights" to be protected are notice of charges and an opportunity to defend against those charges. The Petitioner was afforded these rights and the Mississippi Supreme Court so found.[11]

Petitioner lists six rationales in support for his position. Among these rationales are (1) laches, (2) staleness, (3) prejudice, (4) "actual" prejudice, (5) fault, and (6) "no speedy trial at all." Interestingly, all of the cases cited by Petitioner in support of his rationales are decisions from the various states' highest courts. Petitioner cites no Federal Court or U.S. Supreme Court decisions to support his various theories. This demonstrates that disciplinary proceedings are usually left to the jurisdiction and discretion of the various states. Moreover, Petitioner raised these issues in his appeal to the Mississippi Supreme Court, all of which were rejected.

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[11] Effective January 1, 1984, the Mississippi Supreme Court exercised its "exclusive and inherent" jurisdiction over bar disciplinary proceedings to transfer these duties from the Mississippi Legislature to itself. Prior to January 1, 1984, Mississippi's disciplinary process was governed by statute. Effective January 1, 1984, the disciplinary process was governed by Rules adopted by the Mississippi Supreme Court. One of the Court's amendments was to clarify the accused attorney's right to confront and examine his accusers and their witnesses.

Notwithstanding these basic arguments, taking Petitioner's rationales one by one they can easily and summarily be addressed.

First, "laches" has no merit since the Bar did not delay in bringing the charges against Mr. Barrett. What took so long was adjudication of the charges, not the bringing of the charges. Adjudication is within the province of the judiciary or its appointees.

In addition, laches is an equitable concept. Therefore, there is no quantifiable time period by which laches can be measured. Laches has been defined as:

> An equitable doctrine which bars a claim for relief if an unreasonable delay prejudices the defendant. *Landis v. Hudgson*, 109 Idaho 252, 706 P.2d 1363 (Idaho 1985).

Moreover, many jurisdictions have ruled that laches is not applicable in bar disciplinary cases because the purpose of those proceedings is protection of the public. *Attorney Grievance Commission v. Kahn*, 431 A.2d 1336 (1981); *Attorney Grievance Committee of Maryland v. Engerman*, 424 A.2d 362 (Md. 1981); *Anne Arundel County Bar Ass'n. v. Collins*, 325 A.2d 724 (1974); *In Re Weinstein*, 459 P.2d 549 (1969).

Even in those jurisdictions that have ruled laches is applicable have required a showing of prejudice[12] or only

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[12] *Osterloh v. State of Idaho*, 100 Idaho 702, 604 P.2d 716 (Idaho 1979); *State ex rel. Oklahoma Bar Ass'n v. Lowe*, 640 P.2d 1361 (Okla. 1982).

used as a factor to be considered in mitigation of the sanction to be imposed.[13]

For the foregoing reasons, the Bar submits this argument should be rejected.

Second, "staleness" must be rejected for the reasons listed immediately above.

Third, "prejudice" must be rejected because there has been no presentation of credible evidence to support an allegation of prejudice. If there was, the Mississippi Supreme Court may have dismissed the charges since it said Barrett would have to demonstrate that he was substantially prejudiced by the delays before the Court could determine that he was deprived of his right to a fair trial (App. 25).

Fourth, "actual" prejudice should be rejected for the same reason that prejudice should be rejected.

Fifth, the "fault" was not entirely the Bar's. The Petitioner carries a responsibility for a portion of the "delay".

Sixth, Petitioner admits that Mississippi is a "no speedy trial right state". The Bar tends to agree but since we have no case law directly on point where real and actual prejudice existed, we do not know for sure what the Mississippi Supreme Court's decision would be when that issue is properly raised. Nevertheless, Mississippi

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[13] *Louisiana State Bar Association v. Edwards*, 387 So.2d 1137 (La. 1980); *Matter of McNerthney*, 610 P.2d 731 (1980); *Matter of Ressa*, 621 P.2d 153 (1980); *Application of Phillips*, 510 F.2d 127 (1975).

can be considered a "no speedy trial right" state at the present time except for the existence of actual prejudice.

Petitioner advances the argument that the minor and her father would have been material witnesses in his defense. He further submits that they were present, willing and able to testify for many years but by trial had left the jurisdiction and could not be subpoenaed. Throughout the nine (9) year history of this case, Mr. Barrett did not voluntarily produce the father and daughter as witnesses. Moreover, the record will reflect that the Petitioner did not request subpoenas be issued for them to testify during the nine (9) year period it took to get the complaint investigated and tried.[14]

Moreover, any inference that the father and daughter could have rebutted the two prosecution witnesses' testimony, who were Judges or former Judges, is speculation. The Petitioner had access to and knowledge of the whereabouts of these witnesses not the Bar. For him to now come before this Court and complain about not having them available to testify either voluntarily or through judicial compulsion is an attempt to lay blame on someone else for his apparent lack of ability to preserve testimony he felt would be favorable to him.

The record reviewed by the Mississippi Supreme Court does not include any evidence that Barrett ever intended to call the father and daughter as potential witnesses, either in the investigatory stage or at trial

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[14] The Petitioner was obviously aware of the availability of having subpoenas issued for their attendance since that issue was litigated in the *Attorney K* decision previously cited herein.

before the Complaint Tribunal. He made no specific proffer of what their testimony would be. In fact, the Mississippi Supreme Court held that "Barrett (did) not demonstrate that he intended to call" (the father and daughter as witnesses) (App. 25). Therefore, the absence of these witnesses cannot be used to support his claim of prejudice.

Petitioner further argues that he was constrained by the attorney/client privilege and, therefore, was unable to testify about his conversations or dealings with his clients. This argument fails for several reasons. First, this issue has already been rejected by the Mississippi Supreme Court. Second, Petitioner does not and did not disclose the nature of these conversations or dealings or how they confined or constrained him in his defense. Third, the Petitioner was tried for his conduct, not his clients'. Fourth, Rule 1.6(b)(2), Mississippi Rules of Professional Conduct, allows an attorney to disclose confidential information to the extent the lawyer reasonably believes necessary to establish a defense to a criminal or civil charge against the lawyer based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Finally, Petitioner argues that teachers[15], elected public officials and lawyers should all be treated equally but gives no explanation why public employees and servants

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[15] Petitioner's comparison and equating of teachers to lawyers was specifically rejected by the Mississippi Supreme Court in the decision rendered in this case, at least to "non-tenured" teachers (App. 24).

should be elevated to the status of "officers of the court" as lawyers are considered. Indeed, such promotion is interesting but not explained.

## CONCLUSION

The purposes of the Mississippi disciplinary process are as follows:

First, to punish the wrongdoer. Second, to deter similar misconduct. Third, to preserve the dignity and reputation of the legal profession. Fourth, to protect the public. *Mathes v. Mississippi Bar*, 620 So.2d 1213, 1222 (Miss. 1993).

In *Mathes*, the Mississippi Supreme Court said that the imposition of sanctions has a definite role in reinforcing the confidence of the general public in the legal profession's ability to govern itself. This role is very important regarding Bar disciplinary proceedings because the legal profession assumes the responsibility of governing its members. Therefore, public confidence, faith and integrity in the Bar is dependent upon a willingness to impose appropriate sanctions on its members who have violated the various Codes of Professional Responsibility. 620 So.2d at 1222.

Dismissal of the charges lodged against the Petitioner in the instant case would frustrate the purposes of the Mississippi disciplinary process especially when no unjustified or prejudicial delay is present. Moreover, Petitioner failed to mention that in the Mississippi Supreme Court decision it noted that the delay in bringing the case

to trial was the fault of both the Bar and Mr. Barrett (App. 14).

The issues included in the present Petition for Writ of Certiorari have previously been presented to the Mississippi Supreme Court by this Petitioner and rejected. Furthermore, there is no special and important reason to grant the instant writ.

The instant petition is "fact" specific. Accordingly, no undue or prejudicial delay existed in bringing the Petitioner to accountability. Ironically, what took so long to bring this case to a conclusion was a protracted attempt to give the Petitioner due process, not deprive him of it.

Respectfully submitted,

The Mississippi Bar

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**APPENDIX "I"**

**ATTORNEY K,**

**v.**

**MISSISSIPPI STATE BAR ASSOCIATION.**

**Misc. No. 138.**

Supreme Court of Mississippi.

July 16, 1986.

Disciplinary proceeding was brought. The Supreme Court, Robertson, J., held that failure to subpoena at investigatory hearing chancery judge, who was allegedly deceived by attorney during partition for removal of disabilities of minority of minor child, deprived attorney of his due process rights during Bar disciplinary proceeding, in that attorney, both verbally and in writing, requested issuance of subpoena, and chancery judge was a witness crucial to the case.

Remanded to Committee on Complaints without prejudice.

Richard Barrett, Jackson, for appellant.

Andrew J. Kilpatrick, Jackson, for appellee.

Before ROY NOBLE LEE, P.J., and PRATHER and ROBERTSON, JJ.

ROBERTSON, Justice, for the court:

This case comes before us on the complaint of the Mississippi State Bar that Attorney K[1] has been guilty of misconduct within the meaning and contemplation of certain Disciplinary Rules of the Code of Professional Responsibility of the Mississippi State Bar. More specifically the Bar charges that Attorney K presented to the Chancery Court of one county a partition for removal of disabilities of minority of a minor child without disclosing (a) that the same petition had been denied by another chancellor or (b) that the minor was the ward of a guardianship being administered under the jurisdiction of another chancery court. Proceedings before the Committee on Complaints resulted in a recommendation that the attorney be found guilty of unprofessional conduct and given a public reprimand. From that decision, Attorney K prosecutes this appeal.

The dispositive question appears one of procedure. It is nevertheless fundamental. At the investigatory hearing Attorney K sought to have subpoenaed the chancery judge who is said to have been defrauded and deceived. Our review of the record convinces us that this chancery judge was an important witness in the case, if not the most important witness, from whom the Committee on Complaints should have heard in any event. All of this takes on added dimension as the record reflects hearsay statements from various parties concerning the chancery

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[1] For reasons as obvious as they are statutory we employ the fictitious label "Attorney K" that public disclosure of the names of the attorney here charged might be avoided. Miss. Code Ann. § 73-3-343 (Supp.1985); Mississippi State Bar v. Attorney-Respondent, Etc., 367 So.2d 179 n. 1 (Miss.1979).

judge's view of the facts and, not surprisingly, those hearsay statements differ considerably. The record affirmatively reflects, however, that the entire Committee never heard from the horse himself.[2]

Attorney K's dispositive assignment of error is that he was denied the facility of the witness subpoena to compel the attendance of the trial judge. This we are told violated rights secured to Attorney K under the Constitution and laws of the State of Mississippi as well as the Constitution of the United States.

Bar disciplinary proceedings are inherently adversary proceedings of a quasi-criminal nature. *Levi v. Mississippi State Bar,* 436 So.2d 781, 783 (Miss.1983). In the course of such proceedings there is secured to the accused attorney the right to due process of law. U.S. Const. Amend. 14, § 1; Miss. Const. Art. 3, § 14 (1890); *Myers v. Mississippi State Bar,* 480 So.2d 1080, 1087 (Miss.1985); *A Mississippi Attorney v. Mississippi State Bar,* 471 So.2d 1230, 1233 (Miss.1985); *A Mississippi Attorney v. Mississippi State Bar,* 453 So.2d 1023, 1028 (Miss.1984); *Netterville v. Mississippi State Bar,* 397 So.2d 878, 883-84 (Miss.1981). Within the due process right so secured is the right of the accused attorney to have access to compulsory process for obtaining attendance of witness at critical stages of the disciplinary process. *Cf.* U.S. Const. Amend. VI; Miss. Const. Art. 3, § 26 (1890).

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[2] Apparently, the proceedings before the chancery judge where Attorney K presented the minority disabilities removal petition were ex parte and no transcript of same was made or has been preserved.

At the time in question our statute law provided that state bar disciplinary agencies had the "power to summons and examine witnesses under oath" and that all such "summons or subpoenas shall be issued by the clerk of the court". Miss.Code Ann. § 73-3-307 (Supp.1982); *see also Mississippi State Bar v. Attorney-Respondent, Etc.*, 367 So.2d 179, 182 (Miss.1979).

Though on its face the statute seems to implement the accused attorney's constitutional rights, two serious problems remain. First is the question of, who is the "clerk of the court"? The State Bar argues that the statutory language refers to the clerk of the Supreme Court, noting that inherent as well as statutory jurisdiction of all lawyer disciplinary proceedings are vested in this Court, *see An Attorney v. Mississippi State Bar Ass'n.*, 481 So.2d 297, 300-01 (Miss.1985); *Levi v. Mississippi State Bar*, 436 So.2d 781, 783 (Miss. 1983), and that the bar disciplinary agencies serve only as adjuncts to this Court. This view is correct and, as we understand it, the subpoena process in bar disciplinary proceedings is now administered by the clerk of this Court. This procedure was hardly clear four years ago which leads us to our more serious concern.

These proceedings were had in the fall of 1982. Without question at that time the policy of the Mississippi State Bar was that authority to issue subpoenas was discretionary with the Committee on Complaints. The Committee then had in effect a rule, furnished to Attorney K under the entitlement "Schedule and Procedure For Processing Complaints", which in pertinent part provided:

> No. 10. Complaint Counsel will not issue a subpoena for anyone until a report on this matter is submitted to the Committee on Complaints *and*

*the Committee directs Complaint Counsel to issue a subpoena.* [Emphasis supplied]

The Bar may no more vest in its Committee on Complaints such discretionary authority to withhold or issue a subpoena than might a circuit or chancery court.

It is undisputed that Attorney K, both verbally and in writing, requested the issuance of a subpoena for the chancery judge whom he is said to have deceived. It is undisputed that no such subpoena was issued and that the chancery judge did not appear before the Committee. It is undisputed and indisputable that this chancery judge was and is a witness crucial to the case.

In this setting we have no alternative but to hold that the proceedings against Attorney K had before the Committee on Complaints, upon the basis of which we are asked to adjudge him guilty of professional misconduct and order a public reprimand, were held in violation of due process rights secured to Attorney K by virtue of the Constitution of the United States and of the State of Mississippi and by Miss.Code Ann. § 73-3-307. The recommendation of the Mississippi State Bar is rejected without prejudice. The matter is referred back to the Committee on Complaints of the Mississippi State Bar for further proceedings not inconsistent with this opinion.[3]

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[3] Much in Attorney K's brief argues that he was further entitled to cross-examine the chancery judge. This is a matter separate from Attorney K's right to compulsory process to secure the attendance of the witness. A party may of right have access to the subpoena power to obtain attendance of many witnesses he has no right to cross-examine but must interrogate via nonleading questions. At rehearing once the chancery

REMANDED TO COMMITTEE ON COMPLAINTS WITHOUT PREJUDICE.

WALKER, C.J., ROY NOBLE LEE and HAWKINS, P.JJ, and DAN M. LEE, PRATHER, SULLIVAN and GRIFFIN, JJ., concur.

ANDERSON, J., not participating.

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**judge's attendance has been secured the appropriate bar disciplinary agency will determine under the law and the facts then appearing whether Attorney K may cross-examine.**

APPENDIX "2"

IN THE SUPREME COURT OF MISSISSIPPI

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|---|---|
| RICHARD BARRETT | APPELLANT |
| VS. | CAUSE NO. 92-BA-0336 |
| THE MISSISSIPPI BAR | APPELLEE |

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PETITION FOR REHEARING
OR IN THE ALTERNATIVE
MOTION FOR CLARIFICATION OF THE OPINIONS

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COMES NOW the Appellee herein, The Mississippi Bar (the Bar), in the above-styled and numbered cause and files this its Petition for Rehearing or in the Alternative Motion for Clarification or Correction of the Court's Opinion and/or various dissenting opinions pursuant to Mississippi Supreme Court Rules 14, 27 and 40 and would respectfully say, in support hereof, as follows, to-wit:

1. That this Court rendered a majority and two dissenting opinions on July 21, 1994 which criticized the Bar for taking almost nine (9) years to prosecute the instant case.[1]

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[1] The majority opinion made the following comments which are true but not entirely complete or accurate in its ruling:

A. More than five years later, the Bar filed a Formal Complaint against Barrett charging him with violating the Mississippi Code of Professional Responsibility. The original complaint was filed on August 19, 1982 under the "old" disciplinary system which permitted public reprimands to be

2. The Court's reference to "taking on almost nine (9) years to prosecute" the instant case is not clear nor

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imposed by the Committee on Complaints. On May 17, 1983 the Committee issued a notice to Mr. Barrett advising him of its intention to issue a public reprimand concerning such informal complaint. As was his right, Mr. Barrett appealed that decision to this Court with such "appeal" being assigned Cause No. 138. (Ruling p. 6).

B. Trial dates were set for August 30, 1989, September 5, 1989, December 8, 1989, March 14, 1990 and May 23, 1990. (Case was not set for trial on March 14, 1990. Instead an Order was entered on March 14, 1990 setting trial for May 23, 1990.) (Ruling p. 6).

In addition, the two (2) dissenting opinions made the following comments which again are not entirely true or accurate.

C. Due process and fundamental fairness require that an attorney not be called upon in 1991 to defend against a complaint filed in 1982, when no good reason is shown for the Bar's delay. (Dissent, Justice Lee, p.1)

D. No good can come from the Court allowing the State Bar to "sit on a complaint against an attorney for almost nine (9) years." (Dissent, Justice Lee, p. 2)

E. Regrettably, the only way to create an effective incentive for the Bar to act seasonably is to reverse sanctions imposed after an unreasonable delay. (Dissent, Justice Lee, p. 3)

F. Barrett argues the burden of proof rests with The Mississippi Bar in showing that there was good cause for the close to nine (9) year delay. (Dissent, Justice McRae, p. 2)

G. Because the Bar did not show any good cause for the extended period of time, Barrett should not have to defend himself in an action that is nearly nine (9) years old. (Dissent, Justice McRae, p. 3)

was it the subject of Appellant's Motion to Dismiss since he alleged that Rule 8.1, Rules of Discipline, had been violated because trial of the instant cause (not its predecessor Cause No. 138) had not been held in accordance with Rule 8.1.

3. In order to adequately explain the history of this case over the nine (9) year time span referred to by this Court is attached hereto a "Chronology of Pertinent Events" which summarizes what has occurred. Perhaps, the most significant event in this list of pertinent events is July 16, 1986, the date of this Court's first opinion concerning the instant factual situation. Although cited at two (2) separate places in the most recent opinions (at pages 13 of the majority opinion and page 2 of Justice Lee's dissent) this Court's previous opinion in the *Attorney K v. Mississippi State Bar Ass'n*, 491 So.2d 220, 222 (Miss. 1986) was apparently not recognized as involving the same factual situation as is involved with the most recent opinions.[2]

In its *Attorney K* decision, this Court reversed the Committee's decision and remanded the complaint to the Committee on Complaints.[3] The effect of this remand was

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[2] *Attorney K v. Mississippi State Bar Ass'n* was decided on a procedural issue of due process and did not directly address the merits involved with the case.

[3] Committee on Complaints is now known, by Court order, as the Committee on Professional Responsibility of The Mississippi Bar.

the required investigation had to begin anew with the filing of an information and belief complaint.[4]

After review by both the Board of Bar Commissioners and the Committee on Professional Responsibility, it was decided that the misconduct alleged in the *Attorney K* case was serious enough to warrant the filing of an information and belief complaint which resulted in the filing of same by the Bar's General Counsel on October 14, 1986.

4. Once the information and belief complaint was filed, it proceeded to the investigatory stage of the disciplinary process. As the entries in the Chronology of Events demonstrate, it was difficult to arrange convenient times and dates for the two witnesses, one who was the sitting Chancellor and the other who was the former Special Chancellor who was not subpoenaed in the *Attorney K* case and resides outside of Jackson, to be extensively and thoroughly interrogated by Mr. Barrett.[5] Unfortunately, it took over a year and a half to complete these two witnesses' testimony as well as the other witnesses Mr. Barrett wanted to question in addition to the Bar asking Mr. Barrett questions when he testified in his own defense.[6]

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[4] As the Chronology of Pertinent Events demonstrates, Mr. Barrett, following the rendering of the *Attorney K* decision, asked the Committee to reconsider "dismissing" the complaint previously filed against him in Cause No. 138.

[5] Transcripts of the various sessions of the investigatory hearings encompass five volumes of testimony and exhibits.

[6] Right or wrong, the Bar's counsel allowed Mr. Barrett to conduct extensive questioning of the witness who was not

5. After the investigation was completed, a report had to be prepared and forwarded to Mr. Barrett and the Committee for their consideration. The report was prepared. Mr. Barrett responded to the report raising several legal and constitutional issues. The Committee then met less than thirty (30) days after the report was submitted to them and approximately fifteen (15) days after Mr. Barrett's response to the Bar's report was received by the Committee. Subsequently, the Committee issued its decision by directive letter to the Bar's General Counsel dated November 4, 1988 and received by the Bar on November 7, 1988. In accordance with the applicable Rule of Discipline, specifically Rule 7.3, the Bar filed the Formal Complaint in this instant case on December 5, 1988. The Court's decision in this case as well as the Chronology of Events attached hereto sufficiently describes what the sequence of events was after the instant Formal Complaint was filed. However, the Bar cannot locate an Order Setting Trial Date for March 14, 1990 as set forth in the Court's instant Opinion. Instead, the Bar did locate an Order entered on March 14, 1990 setting trial date for May 23, 1990.[7]

6. The Court's Opinion states that the "Tribunal continued this case four times before reaching the merits." (Court's Opinion, p. 6). The Opinion goes on to

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allowed to be subpoenaed in the *Attorney K* case when this case was referred back to him for additional investigation.

[7] A review of the Supreme Court Clerk's "Appellate Court Tracking System" docket sheet reflects an Order entered on March 14, 1990 setting trial for May 23, 1990 but no Order setting trial for March 14, 1990.

list five trial dates in support of the aforequoted statement, said being August 30, 1989, September 5, 1989, December 8, 1989, March 14, 1990 and May 23, 1990. This apparent discrepancy is one of the areas that the Bar is asking the Court to clarify.

7. Although not specifically stating so in its Opinion, the clear inference is the responsibility for these continuances lies with the Bar. Consequently, a closer review of the reasons for such continuances is necessary.[8]

(1) The August 30, 1989 trial date was set by mistake since one of the Complaint Tribunal members could not be available on that day.[9]

(2) The trial was rescheduled for six (6) days later on September 5, 1989. The September 5, 1989 trial was continued because the Assistant General Counsel who was assigned to try this case was pregnant at that time and subsequently delivered her first child prior to the beginning of the trial. The Bar respectfully submits that the pregnancy and subsequent delivery of Assistant General Counsel's first child constituted "good cause" for

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[8] The record reflects that the Bar filed a Motion to Set Trial Date on April 18, 1989 advising the Tribunal that the 180 day period would run on June 5, 1989. Nevertheless, the Tribunal did not rule on the Bar's Motion until July 21, 1989. While not criticizing the Tribunal for failing to set this matter for trial before June 5, 1989, the Bar asks the Court to take judicial notice that trial dates cannot be set by the parties alone.

[9] The Order resetting trial was entered on July 26, 1989 well in advance of August 30, 1989 indicating the trial was set by mistake.

continuance of the September 5, 1989 trial of the instant matter.

(3) The trial was then rescheduled for December 8, 1989 but again had to be continued because of the unavailability of Judge Bridges.

(4) The next trial setting was May 23, 1990 which was set through entry of an order on March 14, 1990. It was at this May 23, 1990 hearing that Mr. Barrett was incapable of proceeding even though he did not make a motion for a continuance nor did the Bar move to continue the case. Therefore, any "delay" after May 23, 1990 is a result of Mr. Barrett's condition or actions. In addition, at the May 23, 1990 hearing, Mr. Barrett was instructed by the Tribunal's Presiding Judge to keep Bar counsel advised of his medical and physical condition so that the trial could be rescheduled as soon as possible.

Subsequently, on June 9, 1990 Mr. Barrett advised Bar counsel, by letter, that he objected to the procedure established by the Presiding Judge which was for Mr. Barrett to notify Bar counsel of his medical and physical condition and then Bar counsel was to submit reports of Mr. Barrett's medical and physical condition to the Presiding Judge. In response, Bar counsel by letter dated June 15, 1990 advised Mr. Barrett to send his periodic status reports pertaining to his medical and physical condition to the Presiding Judge with copies to the other members of the Tribunal and Bar's General Counsel. General Counsel's letter concludes: "I will be glad to abide by whatever decision the Tribunal makes with regard to the rescheduling of this matter on a date that is available to all parties."

Mr. Barrett rejected Bar Counsel's suggestion by letter dated June 30, 1990 wherein he stated as follows:

> " . . . I feel constrained to respectfully adhere to the Judge's oral suggestion . . . I (will submit the statement on my medical condition to you for you to circulate it to the Tribunal, if need be."

The medical report referred to by Mr. Barrett on June 30, 1990 was a separate letter from Mr. Barrett dated that same date on Mr. Barrett's letterhead which read as follows:

> "Dear Mike:
>
> Judge Dale asked me to write you about my medical condition. The cast on my leg has been removed, but the bone has not healed as yet. I must keep the limb elevated in connection with the circulation problems and strictly limit activity.
>
> I still experience pain, am on crutches and as much as possible, staying home to mend. I have a doctor's appointment again in a few weeks and will update you further as I am advised.
>
> With regards,
> Sincerely,
> Richard Barrett"

No subsequent medical or status reports were received from Richard Barrett by the Bar's General Counsel.

8. After not hearing from Richard Barrett for a protracted period of time, the Bar, by March 6, 1991, but

probably well before that date[10], started to make arrangements to reschedule the trial. An Order Resetting Trial for May 3, 1991 was executed by the Presiding Judge on behalf of the Complaint Tribunal on the Tribunal's Motion on March 21, 1990 and filed with the Clerk on March 25, 1991. The "delay" from May 23, 1990 to May 3, 1991 was solely attributable to Mr. Barrett's medical and physical condition as well as his failure to abide by Judge Dale's "suggestion" to send the Bar's General Counsel periodic reports concerning his medical and physical condition.

9. Trial was ultimately held concerning this matter on May 3, 1991.

10. The Bar respectfully asks this Court to take judicial notice that certain administrative steps need to be implemented to avoid delays in the scheduling and rescheduling of trials. For example, terms of "Court" for

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[10] The usual procedure is for Bar Counsel to contact the Presiding Judge for available dates. Next, we contact the Respondent or attorney representing the Respondent to try and match available dates. Next, we contract the other members of the Tribunal to try and schedule a convenient date with all involved. When, and if, this is accomplished, we contact everyone and confirm the date. Then, an Order Setting Trial Date is sent to the Presiding Judge for his signature. Upon its return, the Bar files the Order with the Clerk. Then, the Bar sends a copy of the "Clerk-stamped" Order to the Tribunal members and the parties. However, if none of the dates originally given by the Presiding Judge are available, then, the Bar counsel starts the process all over again. Obviously, quite a few telephone calls are involved. Likewise, the time it takes to contact all of the individuals can vary from several hours to several days or weeks.

the Tribunals may need to be established. A "Court Administrator" may need to be appointed to help schedule disciplinary trials just as Court Administrators are currently available and performing similar services for Chancellors and Circuit Court Judges.

11. Notwithstanding the opinions rendered in this case, the Bar respectfully submits that it is only responsible for the "delay" between September 5, 1989 and December 8, 1989 for trial of this case. On April 18, 1989 when the Bar filed its Motion to Set Trial Date it tacitly expressed its readiness to proceed to trial prior to June 5, 1989. Nevertheless, the Tribunal did not rule on such Motion until July 21, 1989 and set trial for August 30, 1989. Such "delay" cannot be attributable to the Bar unless the Bar had the authority to set the trial prior to June 5, 1989 regardless of what whether such dates were available with the Tribunal members and Mr. Barrett. The answer to this statement is so obvious as to border on disrespect, at worst, and ignorance of who has the authority to set cases for the Tribunal, at best.

12. the next "delay" was from August 30, 1989 to September 5, 1989. These six (6) days were a result of a mistake in the availability of one of the Tribunal members. This "delay" is minuscule and if responsibility must be laid somewhere, the Bar will take it. Regardless, the reason for the delay was discovered very quickly and a resetting was secured expeditiously.

13. The next "delay" was from September 5, 1989 to December 8, 1989. Again, this "delay" was the responsibility of the Bar. Nevertheless, the reason for the continuance qualifies as a "good cause" since the birth of a child is a cause to celebrate.

14. The next "delay" from December 8, 1989 to May 23, 1990 resulted because of the busy schedule of Judge Bridges and the various Complaint Tribunals members and counsels involved. Evidencing the "good faith" of the Bar in trying to get this case reset is the entry of an Order Setting Trial Date filed in March 1990 for a trial to be held approximately 2½ months later. The Bar is not responsible for this continuance nor should it be criticized that it took from December 8, 1989 until May 23, 1990 to reschedule trial in this case.

15. The last delay from May 23, 1990 to May 3, 1991 cannot be held to be the responsibility of the Bar. Clearly this responsibility lies with Mr. Barrett. The Bar will concede that just as pregnancy constitutes "good cause", falling off a roof and being seriously injured constitutes "good cause". What doesn't constitute good cause is Mr. Barrett's failure to abide by the Presiding Judge's suggestion for him to keep the Bar advised about his physical and medical condition. He did not comply with this suggestion and his failure to deserving of this Court's criticism, if the Court determines, after reviewing this Petition for Rehearing, that the criticism of the Bar previously included in its Opinions is still warranted. The Bar is just as interested, if not more so, in a speedy trial and just resolution of charges of professional misconduct as anyone who is involved with the disciplinary process. The history of the Bar in disciplinary proceedings is the

Bar doesn't ask for continuances, except for "good cause", in very many cases. The problem lies in getting the cases set and reset for trial. The Bar needs help in this regard.

16. Finally, the facts present in this case do not support the various criticisms referred to herein which are included in the cited Opinions rendered in this case, such as, characterizing the Bar's prosecution of this case as "sitting on a case for almost nine (9) years". Every lawyer and the Bar is worthy of respect until he or she proves otherwise. Justified criticism is fine. Constructive criticism is welcome. However, criticism should only be included in court opinions when same is supported by the facts involved and where warranted. The instant case is not such a situation.

In conclusion, the Bar respectfully submits that certain statements included in the various opinions rendered in this case should be deleted, clarified or reworded to reflect factually supportable statements.

Respectfully submitted,

THE MISSISSIPPI BAR

BY: /s/ Michael B. Martz
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## CERTIFICATE OF SERVICE

I, Michael B. Martz, do hereby certify and attest that I have this date mailed a true and correct copy of the foregoing instrument to the Honorable Richard Barrett, at his last known business mailing address of P.O. Box 2050, Learned, Mississippi 39154 and to each Complaint Tribunal member assigned to this matter.

CERTIFIED, this the 2nd day of August, 1994.

/s/ Michael B. Martz
Michael B. Martz

## CHRONOLOGY OF EVENTS

1. *July 16, 1986* – Supreme Court's Decision reversing Public Reprimand imposed upon Richard Barrett in Cause No. 138. (See *Attorney K v. Mississippi State Bar Association*, 491 So.2d 220 (Miss. 1986))
2. *July 18, 1986* – Letter from Barrett to former General Counsel, Andy Kilpatrick asking the Committee to dismiss the original complaint.
3. *Between July 16, 1986 and September 11, 1986* – Memo from Mike Martz to Board of Bar Commissioners reporting Supreme Court's decision in the *Attorney K* case.
4. *September 19, 1986* – Memo from Assistant General Counsel, Connie S. Jelliffe to Committee on Professional Responsibility for Committee's decision concerning whether an information and belief complaint should be filed against Mr. Barrett.
5. *September 19, 1986* – Committee meets and directs General Counsel to file an information and belief complaint against Barrett in this case.
6. *October 14, 1986* – Informal complaint filed against Mr. Barrett.
7. *October 16, 1986* – Notice given to Mr. Barrett that an informal complaint has been filed against him in this matter and that he has until October 31, 1986 to file a response to the complaint.
8. *October 27, 1986* – Mr. Barrett requests twenty (20) additional days to file his response to the informal complaint.
9. *November 5, 1986* – The Bar grants Mr. Barrett's request for additional time and re-establishes due date of November 20, 1986.

10. *November 13, 1986* – Mr. Barrett files his response to the informal complaint.
11. *November 21, 1986* – Committee meets and orally refers the instant informal complaint to General Counsel to conduct an investigatory hearing.
12. *December 17, 1986* – Committee sends letter to General Counsel to conduct investigatory hearing into this matter.
13. *March 10, 1987* – Notice of investigatory hearing scheduled for March 25, 1987.
14. *March 17, 1987* – Letter from Barrett requesting the March 25, 1987 hearing be continued until April 13, 1987.
15. *March 19, 1987* – Investigatory hearing to take Robert McFarland's testimony scheduled for April 13, 1987.
16. *April 13, 1987* – Investigatory hearing began but not concluded; rescheduled for July 29, 1987.
17. *July 29, 1987* – Investigatory hearing reconvened with regard to this case but not completed.
18. *August 18, 1987* – Notice that the investigatory hearing would be reconvened on September 17, 1987 in Judge McFarland's office in Bay Springs, Mississippi.
19. *September 8, 1987* – Letter confirming September 17, 1987 reconvening of investigatory hearing.
20. *September 9, 1987* – Letter from Judge McFarland to Ms. Jelliffe confirming his availability on September 17 and September 21.
21. *September 17, 1987* – Investigatory hearing reconvened in Judge McFarland's office but not completed.

22. *September 21, 1987* – Letter from Barrett to the Bar indicating that Mr. McFarland apparently forgot to schedule enough time to complete the investigatory hearing and Mr. Barrett requested a subpoena be issued for Mr. McFarland to produce all documents related to the McPhersons, Mr. Bridges or any other person directly or indirectly related to the subject matter of the informal complaint.
23. *October 28, 1987* – Letter from the Bar to Mr. McFarland indicating that his examination would be reconvened on December 1, 1987.
24. *November 3, 1987* – Letter from the Bar to the Chairman on the Committee on Professional Responsibility asking that the deadline to conduct the investigatory process be completed and extended an additional forty-five (45) days.
25. *November 4, 1987* – The Committee grants an additional forty-five (45) days to complete investigation.
26. *November 19, 1987* – A letter from the Bar to Mr. Barrett confirming reconvening of investigatory hearing for December 2, 1987 to conclude Judge McFarland's testimony.
27. *November 20, 1987* – A letter from Mr. Barrett notifying that the date he recalled was December 1, 1987 not December 2, 1987.
28. *December 1, 1987* – Hearing reconvened but not completed.
29. *December 7, 1987* – Letter from Barrett indicating that the hearing could be reconvened on or about January 8, 1988.
30. *December 16, 1987* – Letter from the Bar to Mr. Barrett indicating an attempt to schedule a convenient time to take Judge Bridges' testimony during January or February 1988.

31. *December 31, 1987* – Note from Judge Bridges that he would available during the week of February 1, 1988.
32. *January 5, 1988* – Letter from the Bar to Judge Bridges asking when he would be available to be deposed in this proceeding.
33. *January 7, 1988* – Copy of transcript of December 1, 1987 hearing provided to Barrett by the Bar.
34. *January 14, 1988* – Notice that the hearing will reconvene on March 8, 1988.
35. *January 14, 1988* – Letter to Chancellor Bridges notifying him that his testimony will be taken on March 8, 1988.
36. *January 18, 1988* – Letter from court reporter to Mr. Barrett providing signature page executed by Mr. McFarland.
37. *February 4, 1988* – Request from Mr. Barrett to have available several different court files for his use at the investigatory hearing.
38. *February 8, 1988* – Letter from the Bar to Mr. Barrett in response for production of court files.
39. *February 12, 1988* – Letter from Barrett to the Bar re: production of court files.
40. *February 17, 1988* – Letter from Bar to Barrett advising him arrangements have been made to have court files available on March 8, 1988.
41. *February 22, 1988* – Letter from the Bar to Mr. Barrett re: production of court files.
42. *February 26, 1988* – Letter from Barrett to the Bar asking for a copy of the Rules of Discipline pursuant to which this matter was brought.

43. *March 8, 1988* – Hearing reconvened to take Judge Bridges' testimony. Hearing not concluded on this date.
44. *March 10, 1988* – Letter to Chancellor Bridges asking about his availability on April 7, 1988 to conclude his testimony.
45. *March 12, 1988* – Letter from Barrett to the Bar indicating that he anticipates a full day if necessary to examine Judge Bridges and reserves the right to a full day's hearing.
46. *April 7, 1988* – Hearing reconvened to continue taking the testimony of Judge Bridges by Mr. Barrett.
47. *May 17, 1988* – Request from the Bar to the Chairman of the Committee on Professional Responsibility for a forty-five (45) day extension to prepare a report in this complaint.
48. *May 18, 1988* – Committee grants 45 days to complete investigation.
49. *June 20, 1988* – The Bar's request for extension of time until July 15, 1988 to complete its investigation because of lack of clerical assistance and the transcript (court reporter hired by the Bar was no longer in practice) resulted in the reports not being put in final typed form. Request granted. Additional requests were made and granted.
50. *September 22, 1988* – Report sent to the Committee on Professional Responsibility and Mr. Barrett.
51. *September 29, 1988* – Letter from Mr. Barrett to the Bar objecting to further time extensions. Also included was his response to the investigatory report.

52. *October 14, 1988* – Committee met and decided probable cause existed for the filing of a Formal Complaint.
53. *November 4, 1988* – Letter from the Committee on Professional Responsibility to the Bar to file a Formal Complaint. Letter received on November 7, 1988.
54. *December 5, 1988* – Formal Complaint in the instant cause filed.
55. *December 7, 1988* – Complaint Tribunal appointed.
56. *December , 1988* – Process served.
57. *December 27, 1988* – Barrett requests additional time to answer.
58. *February 9, 1989* – Barrett submits the request for additional time to file answer.
59. *February 20, 1989* – Barrett notifies Bar that his Answer will be filed in the "next day or so."
60. *February 22, 1989* – Barrett's Answer filed in this cause.
61. *April 18, 1989* – The Bar filed a Motion for Trial Setting.
62. *May 5, 1989* – Bar notified that Presiding Judge cannot set trial before July.
63. *July 11, 1989* – Tribunal signed an Order Setting Trial for August 30, 1989.
64. *July 20, 1989* – Bar notifies Tribunal of problem with the August 30, 1989 trial date.
65. *July 21, 1989* – Order Setting Trial Date for August 30, 1989 signed indicating lack of notice of problem setting trial.

66. *August 30, 1989* – Trial continued because of the inability of one Tribunal member to attend trial. Trial re-set for September 5, 1989.
67. *Approximately August 31, 1989* – Assistant General Counsel assigned to try this case delivers her baby. Case continued. Case rescheduled for December 8, 1989. However, because of the unavailability of Judge Bridges the case was continued with no specific date mentioned for re-trial.
68. *October 11, 1989* – Order entered re-setting trial for December 8, 1989.
69. *October 27, 1989* – Notice to the Tribunal and Mr. Barrett that Judge Bridges has an out-of-town committment. Trial had to be rescheduled.
70. *October 31, 1989* – Motion for Continuance filed.
71. *November 10, 1989* – Order entered continuing case from December 8, 1989 to an indefinite date.
72. *March 13, 1990* – Bar sends proposed Order Setting Trial Date to Tribunal.
73. *March 14, 1990* – Case re-set for May 23, 1990.
74. *March 26, 1990* – Barrett filed Motion to Dismiss.
75. *April 10, 1990* – Bar responded to Barrett's Motion to Dismiss.
76. *May 23, 1990* – The Bar appeared ready to proceed to trial. However, Mr. Barrett appeared in hospital clothes and in no condition to try the case. He did not make a motion for a continuance which caused the Tribunal to continue the case on its own motion.
77. *May 23, 1990 through March 20, 1991* – No indication from Mr. Barrett that he had recovered from his injuries or that he was ready to proceed to trial.

78. *March 21, 1991* – Order entered on motion of the Tribunal resetting the case for trial for May 3, 1991.
79. *May 3, 1991* – Case tried.

**Documents supporting entries listed have *not* been attached hereto because of their voluminous nature. However, documents to support these entries will be produced upon request of the Court. Time gaps are not mentioned herein except where supporting documents were readily available to support the entries. However, such document can probably be located upon further search if the Court deems same to be pertinent to reconsideration of the Petition for Rehearing.**